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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT	PAPER NUMBER
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1771

12

DATE MAILED: 06/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/518,756

Applicant(s)

EVERETT ET AL.

Examiner

Norca L. Torres-Velazquez

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,6,7,9-37 and 39-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,6,7,9-37 and 39-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on March 5, 2002 have been fully considered but they are not persuasive.

a. Applicants argue that the Seymour reference does not teach an article, which includes a superabsorbent, configured to have the Tau values or the MAUL values claimed. Further, Applicants state that Seymour fails to disclose or suggest an absorbent article wherein a first primary layer region includes a superabsorbent having a first Tau value and a second primary layer region that includes a superabsorbent having a second Tau value. Applicants also state "It is clearly improper to conclude that the structures taught by Seymour would meet any 'property requirement specified'".

It is noted that properties, such as Tau values or MAUL values, are dependent on the structure and chemistry of the superabsorbent. The Patent and Trademark Office is not equipped to perform experiments to determine these properties, therefore cases are evaluated based in their teaching. In this particular case, the chemistry and structures are found to match therefore we can conclude that they have the same properties.

Rejection of claims 36-39 under 35 U.S.C. 112, second paragraph has been withdrawn in view of Applicant's amendment.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 9-37 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by SEYMOUR et al. (US 4,923,454) as stated in previous action.

SEYMOUR et al. teaches absorbent web structures suitable for incorporation into absorbent articles. (Abstract) The reference discloses a structure that comprises an entangled web of melt-blown microfibers having diameters that range from about 0.5 to 60 microns, with a dry density that ranges from about 0.006 to 0.3 g/cc. Further, it teaches the use of from about 10% to 90% by weight of substantially nonabsorbent synthetic staple fibers and/or from about 5% to 60% by weight of particles of a polymeric gelling agent. (Column 3, lines 11-36) SEYMOUR et al. further teaches that the microfibers have an average diameter ranging from about 1 to 30 microns. (Column 4, lines 41-43) For reasons of industrial hygiene, average particle sizes of polymeric gelling agent particles smaller than about 10 microns are less desirable. Particles having a smallest dimension larger than about 2 mm may also cause a feeling of grittiness in the absorbent article, which is undesirable from a consumer aesthetics standpoint. Preferred for use in the fluid control systems are polymeric gelling agent particles substantially all which have a particle size of from about 10 microns to about 2 mm. The polymeric gelling agent component can comprise up to about 60% by weight of the absorbent web structures. (Column 14, lines 26-41).

SEYMOUR et al. discloses that the hydrophilic nylon copolymer used to form microfibers of the absorbent structures of their invention will have an advancing contact angle with water of 90° or less, more preferably such a copolymer will have an advancing contact angle with water between about 0° and 60°. (Column 5, lines 65-68)

For use in disposable absorbent articles, dry basis weight of the web structures will preferably range from about 100 to 800 g/m², more preferably from about 100 to 500 g/m². When such structures are to be used as absorbent cores for sanitary napkins, dry basis weight will generally range from about 200 to 450 g/m². Further, SEYMOUR et al. disclose that the caliper of the absorbent web structures can also be widely varied depending upon the desired end use of the structures. Frequently caliper of the dry web structure will range from about 0.46 to 3.1 centimeters, more preferably from about 1.5 to 2.1 centimeters. (Column 19, lines 34-49)

SEYMOUR et al. discloses that absorbent articles may use a multi-layer absorbent core configuration wherein a web structure is used in combination with one or more separate layers comprising conventional absorbent structures. (Column 21, lines 35-40). The reference further discloses that one preferred type of absorbent article is one that utilizes a multi-layer absorbent core having a first layer and second layer comprising a web structure of their invention that may contain up to about 40% by weight of polymeric gelling agent. Another preferred type of absorbent article utilizes a multi-layer absorbent core having an upper layer comprising a web structure of their invention and a lower layer, which comprises a laminate of at least one layer of dispersed particles of polymeric gelling agent overwrapped with sheets of tissue. (Column 21, lines 54-68).

The SEYMOUR et al. reference also teaches that absorbent articles of their invention will frequently comprise a substantially liquid impervious backing sheet, a liquid pervious top sheet and an absorbent core comprising an absorbent structure positioned between the backing sheet and the top sheet. (Column 21, lines 17-21). The reference also teaches webs prepared by air laying a stream of fibers formed by disintegrating dry lap, followed by calendaring or compressing of the resulting web. (Column 30, lines 25-30).

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Regarding the limitation of having a Liquid Wicking Value of at least about 38% in one of the first and second primary layer regions fails to provide patentable distinction over the prior art. The prior art is found to disclose each chemical and structural feature instantly claimed, therefore it must meet the property requirement specified, otherwise, applicant's claim is incomplete. Note ex parte Slob (157 USPQ 172), which supports this position. The same applies to the claimed MAUL and Tau values.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4, 6-8 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over SEYMOUR et al. as applied to claims 9-37 and 39 above, and further in view of DODGE, II et al. (US 5820973).

SEYMOUR et al. fails to expressly disclose that the absorbent core has a crotch width of not more than about 10 cm.

DODGE, II et al. disclose a surge material for personal care products and teaches the use of a design of an absorbent article with a "narrow crotch", which means a crotch width having at most 7.6 cm. (Column 11, lines 61-65)

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the absorbent article and provide it with a narrow crotch to reduce the bulkiness in the crotch region of the article, improve the fit, comfort and aesthetics.

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Furthermore, where the general conditions of a claim are met, mere changes in size and shape have been held to be within skill of the art dependent only on the desired end use of the article claimed, *In re Rose* (105 USPQ 237), *In re Dailey* (149 USPQ 47).

6. Claims 1, 4, 6-8 and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over BEWICK-SONNTAG et al. (US Patent 5,762,641) in view of ZENKER et al. (US 6245051B1) and DODGE, II et al. (US 5820973).

BEWICK-SONNTAG et al. discloses an absorbent article comprising a liquid pervious top sheet, a liquid impervious backsheet, and an absorbent core. (Column 9, lines 23-26). The absorbent core comprises: a first structure comprising an upper layer comprising a first fibrous material and a first superabsorbent material, the absorbent core also comprises a second structure comprising a second fibrous material and a second superabsorbent material. (Column 3, lines 1-10). BEWICK-SONNTAG et al. also teaches that the first structure can comprise first particulate super-absorbent mixed with the first fibrous material as a substantially homogeneous upper layer, but preferably some of the super-absorbent is present in a distinct layer below the upper layer of first fibrous material. The second or storage-structure can comprise a mixture of the second fibrous material and the second superabsorbent material. Preferably, they are present in distinct layers. (Column 4, lines 27-36).

However, the reference does not disclose an absorbent core with a dry thickness of not more than about 6 mm, and a minimum crotch width of not more than about 10 cm.

ZENKER et al. disclose an absorbent article and teach a retention portion 48 that can have a dry thickness which is at least a minimum of about 0.1 cm and can be not more than about 0.8 cm. (Column 13, lines 29-39)

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DODGE, II et al. disclose a surge material for personal care products and teaches the use of a design of an absorbent article with a “narrow crotch”, which means a crotch width having at most 7.6 cm. (Column 11, lines 61-65)

Since BEWICK-SONNTAG et al., ZENKER et al. and DODGE, II et al. are all from the same field of endeavor, the purpose disclosed by ZENKER et al. and DODGE, II et al. would have been recognized in the pertinent art of BEWICK-SONNTAG et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the absorbent article and provide it with a dry thickness between about 0.1 cm to about 0.8 cm, and with a narrow crotch for the purpose of reducing a wet-thickness of the absorbent structure and also to reduce the bulkiness in the crotch region of the article, improve the fit, comfort and aesthetics of it as disclosed by ZENKER et al. (Column 2, lines 22-26).

The limitation of having a Liquid Wicking Value of at least about 38% in one of the first and second primary layer regions fails to provide patentable distinction over the prior art. The prior art is found to disclose each chemical and structural feature instantly claimed, therefore it must meet the property requirement specified, otherwise, applicant's claim is incomplete. Note *ex parte Slob* (157 USPQ 172), which supports this position. The same applies to claims 7-8.

As for Claim 4, the Combined Conductance-Wicking Value is inherent from the structure in the independent claim.

As for Claim 6, BEWICK-SONNTAG et al. also teaches that the first structure is intended to be positioned toward a wearer's body in use.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 703-306-5714. The examiner can normally be reached on Monday-Thursday 7:30-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

nlt
May 29, 2002


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
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